

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



TRANSCRIPT OF RECORD.

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Court of Appeals, District of Columbia

OCTOBER TERM, 1900.

No 1001.

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24

JOHN MITCHELL, APPELLANT,

*vs.*

W. WARRINGTON EVANS.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED JUNE 5, 1900.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1900.

No 1001.

JOHN MITCHELL, APPELLANT,

*vs.*

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption.....	<i>a</i>	1
Summons.....	1	1
Motion for bill of particulars.....	2	2
Bill of particulars.....	3	2
Certificate of justice of the peace on appeal.....	4	3
Bill of particulars... ..	6	4
Motion to strike out bill of particulars .....	8	5
Motion to strike out bill of particulars overruled.....	8½	5
Memorandum: Verdict for plaintiff.....	9	5
Motion to require plaintiff to pay costs.....	9	5
Motion for new trial.....	10	6
Affidavits of Chaires, Baker, and Mitchell (omitted in printing)...	11	—
Judgment.....	14	7
Appeal and order for citation .....	15	7
Citation.....	16	7
Memorandum: Deposit in lieu of appeal bond.....	17	8
Instructions to clerk in preparing record on appeal.....	17	8
Clerk's certificate.....	19	9
Appellant's assignment of errors and designation of parts of record to be printed. ....	20	9
Stipulation as to addition to record.....	22	10

# In the Court of Appeals of the District of Columbia.

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JOHN MITCHELL, Appellant, }  
vs. } No. 1001.  
W. WARRINGTON EVANS. }

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a Supreme Court of the District of Columbia.

W. WARRINGTON EVANS }  
vs. } No. 43576. At Law.  
JOHN MITCHELL. }

UNITED STATES OF AMERICA, } ss :  
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Summons.*

Filed December 28, 1899.

DISTRICT OF COLUMBIA, ss :

43576.

The President of the United States to Chas. A. Darling or any qualified constable, Greeting :

Summon John Mitchell (care Wash. Post) to be and appear before me, the subscriber, a justice of the peace in and for the District aforesaid, on the 10th day of November, A. D. 1899, at 2 o'clock p. m., to answer unto the complaint of Warrington Evans in a plea of debt of \$25.00 and interest.

Given under my hand and seal this 7th day of November, 1899.

LEWIS I. O'NEAL, [SEAL.]  
*Justice of the Peace, 452 D Street N. W.*

Endorsed.

NOVEMBER 7, 1899.

Summoned as within directed.

CHAS. A. DARLING, *Constable.*

DECEMBER 11, 1899.

Judgment for defendant; with \$6.75, less \$2.70, paid by plaintiff.

FRANCIS CARROLL MATTINGLY, J. P. [SEAL.]

NOVEMBER 10, 1899.

Certified to Francis Carroll Mattingly, J. P., on venue.  
Costs accrued, \$1.60.

LEWIS I. O'NEAL, J. P.

*Motion for Bill of Particulars.*

Filed November 16, 1899.

Filed December 28, 1899.

In Justice's Court, before Francis Carroll Mattingly, Esq., One of  
the Justices of the Peace in and for the District of Columbia.

W. WARRINGTON EVANS, Plaintiff,	} 43576. At Law. No. 29098.
vs.	
JOHN WILLIAM MITCHELL, Defendant.	

Comes now the defendant, by his attorney, Charles H. Merillat, and  
moves the court that the plaintiff in the above-entitled cause be re-  
quired to furnish the defendant a bill of particulars in the cause  
aforesaid.

CHARLES H. MERILLAT,  
*Attorney for Defendant.*

\* \* \* \* \*

*Bill of Particulars.*

Filed December 28, 1899.

In the Justice's Court, before F. C. Mattingly.

W. W. EVANS	} 43576.
vs.	
JOHN MITCHELL.	

John Mitchell to W. W. Evans, Dr.

July 18, 1898. To removal of tartar, treatment of gums, and extraction of three teeth.....	\$5.00
July 25, 1898. To treatment of gums and removal of tartar.	1.00
July 28, 1898. To treatment of gums.....	1.00
July 30, 1898. To making partial denture.....	25.00
	<hr/>
	\$32.00

(The following in lead pencil :)

It was argued by Dr. Evans, after the performing of the above  
work, that he would accept \$25 in full settlement of the above bill.

4

*Certificate of J. P. on Appeal.*

Filed December 28, 1899.

DISTRICT OF COLUMBIA, *To wit* :

In Justice's Court, before Francis Carroll Mattingly, One of the Justices of the Peace in and for the District Aforesaid, this 28th Day of December, A. D. 1899, in the Case of—

W. WARRINGTON EVANS, Plaintiff,	}	At Law. No. 43576. Action
<i>vs.</i>		for Debt for \$25.00 and
JOHN MITCHELL, Defendant.		Interest.

Date.

Proceedings.

1899.

- Nov. 10. Certified from Justice O'Neal on venue; continued to November 17, 1899, at 2 p. m., on motion of defendant. Issued subpœna for T. J. Jones and E. S. Smith to Constable Charles V. Mallet for defendant. Defendants filed motion for bill of particulars.
16. Subpœna for T. J. Jones and E. S. Smith returned "Summoned as within directed." Defendant filed plea in recoupment and affidavit.
17. Continued to November 24, 1899, at 2 p. m.
22. Issued subpœna to Constable Charles V. Mallet for E. S. Smith and T. J. Jones for defendant.
23. Subpœnas for T. J. Jones and E. S. Smith returned "Summoned as within directed."
24. Plaintiff filed bill of particulars herein had; plaintiff's witnesses: W. W. Evans, M. M. Dalmage; defendant's witnesses: Thomas J. Jones, Edw. S. Smith, John W. Mitchell. Continued to November 25, 1899, at 11 a. m., for argument.
25. Argument had. Judgment reserved.
- Dec. 11. Judgment for defendant, with costs, \$6.75, less \$2.70 paid by plaintiff.
15. Plaintiff filed notice of appeal and surety.
18. Undertaking in appeal entered into and approved, with William N. Cohan as surety.

FRANCIS CARROLL MATTINGLY, *J. P.* [SEAL.]

I, Francis Carroll Mattingly, one of the justices of the peace in and for the said county and District, do hereby certify that the foregoing is a true statement from my docket of all the proceedings had before me in the above cause, and that the annexed are all the original papers therein.

Given under my hand and seal this 28th day of December, A. D. 1899.

FRANCIS CARROLL MATTINGLY, J. P. [SEAL.]

Cost paid by plaintiff, \$4.75.

Cost paid by defendant, \$3.35.

6

*Bill of Particulars.*

Filed March 20, 1900.

In the Supreme Court of the District of Columbia.

W. W. EVANS	}	Law. No. 43576.
vs.		
JOHN MITCHELL.		

John Mitchell to W. W. Evans, Dr.

July 18th, '98.	To removal of tartar, treatment of gums, and extraction of three teeth.....	\$5.00
" 25th, "	To treatment of gums and removal of tartar.	1.00
" 26th, "	To treatment of gums.....	1.00
" 30th, "	To making partial denture.....	25.00
	To services rendered on divers dates from July 30th, 1898, to Jan. 1st, 1899 .....	10.00
		<hr/> \$42.00

After the performance of said services Dr. Evans agreed with John Mitchell to accept \$25.00 in full settlement of the above bill.

7 *Motion to Strike Alleged Bill of Particulars from the Files.*

Filed March 26, 1900.

In the Supreme Court of the District of Columbia.

W. W. EVANS, Plaintiff,	}	Law. No. 43576.
vs.		
JOHN MITCHELL, Defendant.		

Comes now the defendant in the above-entitled cause, by his attorney, Charles H. Merillat, and moves the court to strike from the files and from the records of this honorable court a certain alleged bill of particulars filed in said above-entitled cause in the clerk's office of the supreme court of the District of Columbia, to wit, on March 20, 1900, by direction of the attorneys for the plaintiff, and more especially so much of said certain alleged bill of particulars as is set up in the following words, to wit: "To services rendered on divers dates from July 30th, 1898, to January 1st, 1900, \$10," and for reasons therefor assign the following:

First. That said alleged bill of particulars was not filed in the justice's court from which said cause was appealed.



Second. That said alleged bill of particulars sets up a new and separate cause of action, distinct from and independent of the cause of action tried in the justice's court.

8 Third. That the particulars of demand in the new alleged bill of particulars are vague, indefinite, and indeterminate, and afford the defendant no opportunity to defend thereon by reason thereof.

Fourth. That that part of said alleged bill of particulars which sets up as follows, to wit: "To services rendered on divers dates from July 30th, 1898, to January 1st, 1900, \$10," was not set up in the bill of particulars filed below and does not appear among the papers certified by the trial justice to this honorable court on appeal, and purports to state a new and independent cause of action not tried in the court having original jurisdiction of the cause in the first instance; and the same so appears on the face of the papers certified to this honorable court in accordance with its rules by the justice of the peace before whom the cause now pending on appeal was heard originally.

CHARLES H. MERILLAT,  
*Attorney for Defendant.*

\* \* \* \* \*

8½

Supreme Court of the District of Columbia.

SATURDAY, *March 31, 1900.*

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

\* \* \* \* \*

By Justice Cole.

W. WARRINGTON EVANS, Plaintiff,	} At Law. No. 43576.
<i>vs.</i>	
JOHN W. MITCHELL, Defendant.	
	} Appeal No. 43.

Upon hearing the motion of the defendant to strike out a certain bill of particulars, it is considered that said motion be, and the same is hereby, overruled.

9

*Memorandum.*

April 4, 1900.—Verdict for plaintiff for \$25.

*Motion that Plaintiff Pay Costs.*

Filed April 7, 1900.

In the Supreme Court of the District of Columbia.

W. W. EVANS	} At Law. No. 43576.
<i>vs.</i>	
JOHN MITCHELL.	

And now comes the defendant, by C. H. Merillat, his attorney, and moves the court that the plaintiff be taxed with and required

to pay the costs in said action, and for reasons therefor assigns the following:

First. That the case tried before the court and which was submitted to the jury by the court was a new and independent cause of action not tried in the court of the justice of the peace from which an appeal was taken.

Second. That the defendant had, and the fact so appeared on the trial before this court, a good and perfect defense in law and equity to the cause of action originally tried in the court of the justice of the peace from which this cause was appealed.

Third. That by reason of the introduction of this new matter and new cause of action defendant was surprised and prejudiced  
10 and was put to expense and subjected to costs which he would not have incurred had the plaintiff properly brought his case before the justice of the peace in the first instance.

CHAS. H. MERILLAT,  
*Attorney for Defendant.*

*Motion for New Trial, &c.*

Filed April 7, 1900.

In the Supreme Court of the District of Columbia.

W. W. EVANS	} At Law. No. 43576.
vs.	
JOHN MITCHELL.	

And now comes the defendant, by C. H. Merillat, his attorney, and moves the court to set aside the verdict and to grant to the defendant a new trial, and for reasons therefor assigns the following:

First. Because the verdict is contrary to the evidence.

Second. Because the verdict was excessive and was in disregard of the instructions of the court.

Third. Because of errors of law committed by the justice presiding in his instructions to the jury.

Fourth. Because the defendant was surprised at the trial and was unable by reason of the illness of a material witness at the time of trial to overcome and rebut new and unexpected evidence offered in support of a cause of action not tried before the justice of the peace.

11-13 Fifth. Because of material evidence discovered since the trial not ascertainable by reason of diligence before said trial.

Sixth. Because the court was without jurisdiction to hear and decide the new matter embraced within the plaintiff's bill of particulars filed in the supreme court of the District of Columbia, in this, that said new bill of particulars set up a new and independent cause of action not tried in the court of the justice of the peace from which said appeal was taken and not cognizable in this court in the first instance.

CHAS. H. MERILLAT,  
*Attorney for Defendant.*

14 Supreme Court of the District of Columbia.

FRIDAY, *April* 20, 1900.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

\* \* \* \* \*

W. WARRINGTON EVANS, Pl't'ff, Appellant, }  
   v.        } At Law.   No. 43576.  
 JOHN MITCHELL, Def't, Appellee.        }

Upon hearing the defendant's motion for a new trial, it is considered that the same be, and hereby is, granted, unless the plaintiff remits fifteen dollars of the verdict, and thereupon the plaintiff files herein his remittitur, and the motion for a new trial is overruled, and judgment on verdict less the sum of fifteen dollars is ordered. Therefore it is considered that the plaintiff recover against the defendant the sum of ten dollars (\$10), being the money payable by him to the plaintiff by reason of the premises, together with his costs of suit, to be taxed by the clerk, and have execution thereof. The motion to tax costs against the plaintiff is hereby overruled.

15 *Notice of Appeal.*

Filed April 24, 1900.

In the Supreme Court of the District of Columbia, the 24th Day of  
April, 1900.

W. W. EVANS }  
vs. } Law. No. 43576.  
JOHN MITCHELL. }

The clerk of said court will please enter an appeal to the Court of Appeals of the District of Columbia from the judgment rendered in this cause on the 20th day of April, A. D. 1900; also issue citation against the plaintiff.

CHAS. H. MERILLAT,  
*Attorney for Defendant.*

16 In the Supreme Court of the District of Columbia.

W. WARRINGTON EVANS }  
                   *vs.*                } At Law. No. 43576.  
 JOHN MITCHELL.            }

The President of the United States to W. Warrington Evans, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office, supreme court of the District

of Columbia, on the 24th day of April, 1900, wherein John Mitchell is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 24th day of April, in the year of our Lord one thousand nine hundred (1900).

JOHN R. YOUNG, *Clerk*.

Service of the above citation accepted this 25 day of April, 1900.

HAMILTON & COLBERT,  
*Attorneys for Appellee.*

17

*Memorandum.*

May 10, 1900.—\$50 deposited by appellant in lieu of appeal bond by leave of court.

*Instructions to Clerk, &c.*

Filed May 22, 1900.

In the Supreme Court of the District of Columbia.

W. W. EVANS	} No. 43576.
vs.	
JOHN MITCHELL.	

The clerk of said court will prepare a transcript of the record in the above cause, embracing:

1. Copy of summons before Justice of the Peace L. I. O'Neal.
2. Copy of motion that plaintiff furnish a bill of particulars.
3. Copy of bill of particulars filed in the office of Francis Carroll Mattingly, justice of the peace.
4. Copy of transcript of docket entries of Francis Carroll Mattingly, justice of the peace.
5. Copy of bill of particulars filed in the supreme court of the District of Columbia.
6. Copy of motion to strike bill of particulars from files.
7. Copy of defendant's motion for new trial.
8. Copy of defendant's motion that plaintiff pay costs.
9. Copy of minutes of clerk of court of all proceedings in court of Mr. Justice Cole in above cause.
10. Copy of appeal entered, including acknowledgment of service of citation.

18

CHAS. H. MERILLAT,  
*Attorney for Def't Mitchell.*

## 19 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }  
*District of Columbia,* } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the above and foregoing pages, numbered from 1 to 18, inclusive, to be a true and correct transcript of the record, as per instructions of counsel herein filed, copy of which is made part hereof, in cause No. 43576, at law, wherein W. Warrington Evans is plaintiff and John Mitchell is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto sub-  
 Seal Supreme Court scribe my name and affix the seal of said  
 of the District of court, at the city of Washington, in said  
 Columbia. District, this 5th day of June, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

## 20 In the Court of Appeals of the District of Columbia.

JOHN MITCHELL }  
 vs. } No. 1001.  
 W. WARRINGTON EVANS. }

Comes now the appellant, John Mitchell, and states that one of the errors for which he prosecutes this appeal is in substance that the supreme court of the District of Columbia erred in denying the motion of the defendant below to strike from the files all or so much of the bill of particulars filed by the plaintiff in the supreme court of the District of Columbia as is embraced within the last item of said bill of particulars, to wit, "To services rendered on divers dates from July 30th, 1898, to January 1st, 1899, \$10.00," said item not being in the bill of particulars filed in the court of the justice of the peace who originally filed the cause in the first instance, nor including services for any dates embraced within the dates of said original bill of particulars.

2. That the court erred in taking cognizance of and giving judgment founded on said last item in the bill of particulars objected to.

3. That the court erred in denying defendant's motion for a new trial and to tax the plaintiff with costs.

To the end that the errors of the court may be reviewed and corrected, the appellant hereby designates as necessary for the proper review in this court of the proceedings and record in said cause the printing of all the transcript of record filed herein except as hereinafter designated, to wit:

Notice to attorney for plaintiff at bottom of page 2 and top of page 3.

Notice at bottom of page 8.

Affidavits of Chaires, Baker, and Mitchell, on pages 11 to 14, inc.

- 21 Take notice that the foregoing is the appellant's designation of the parts of the record to be printed on this appeal.  
JOHN MITCHELL, *Appellant*.

Service admitted.

JOHN J. HAMILTON,  
*For Appellee.*

(Endorsed :) Court of Appeals, D. C., April term, 1900. No. 1001. John Mitchell, appellant, vs. W. Warrington Evans. Appellant's assignment of errors & designation of parts of record to be printed. Court of Appeals, District of Columbia. Filed Jun- 11, 1900. Robert Willett, clerk.

22

*Stipulation of Counsel.*

JOHN MITCHELL, Defendant and Appellant,	} No. 43576, S. C. D. C.
<i>vs.</i>	
W. WARRINGTON EVANS, Plaintiff and Appellee.	
	} No. 1001, Court of Appeals.

It is hereby stipulated between counsel that the record on appeal to the Court of Appeals in the above-entitled cause shall include the order of Mr. Justice Cole on March 31st, 1900, overruling the motion of counsel for defendant to strike from the files the bill of particulars filed in the supreme court of the District of Columbia by the plaintiff, and consent that same may be put in the record between pages 8 & 9 of the transcript.

JOHN J. HAMILTON,  
*Attorney for Appellee.*  
CHAS. H. MERILLAT,  
*Counsel for Mitchell.*

Court of Appeals, D. C., April term, 1900. No. 1001. John Mitchell, appellant, vs. W. Warrington Evans. Stipulation to insert in transcript, between pages 8 & 9, order of Justice Cole, dated M'ch 31, 1900. Court of Appeals, District of Columbia. Filed Jun- 12, 1900. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1001. John Mitchell, appellant, vs. W. Warrington Evans. Court of Appeals, District of Columbia. Filed Jun- 5, 1900. Robert Willett, clerk.

